PP

v.

LAI CHEE CHENG

HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[CRIMINAL REVISION NO: 43-3-2001]
20 JUNE 2001

ROAD TRAFFIC: *Disqualification - Dangerous driving - Defendant disqualified from holding class B driving license for life - Whether outside the ambit of s. 42(3) Road Transport Act 1987 - Whether s. 31 Road Transport Act 1987 was intended to apply*

STATUTORY INTERPRETATION: *Canons of construction - Generalia specialibus non derogant - Conflicting provisions in statutes - General and special provisions - Which one prevails - Whether it was intention of Parliament to impose life long disqualification - Road Transport Act 1987, ss. 31, 42(3)*

The defendant pleaded guilty to the offence of driving recklessly. The magistrate had imposed a sentence of three days' imprisonment and a fine of RM3,000 in default of three months' imprisonment. The magistrate also made an order disqualifying the defendant from holding or obtaining a class B driving license for life. It was the issue of the latter disqualification order that was brought before this court by the learned deputy public prosecutor. This order was obviously outside the ambit of s. 42(3) of the Road Transport Act 1987 ('RTA') which generally empowers the court to order that the defendant be disqualified for a period of not less than 12 months from the date of conviction from holding or obtaining a driving license.

Held:

[1] Where an act provides for a specific provision such as the provision containing the maximum sentence as in s. 42(3) of the RTA for the charge in question, and also a general provision as contained in s. 31 of the RTA, the specific provision found in s. 42(3) of the RTA must prevail. G*eneralia specialibus non derogant*.

[2] That s. 31 was not intended to apply here was further reinforced by the amendment to s. 42(3) RTA *vide* Act A1065/99 which came into force on 1 October 1999 which now provides for a minimum of two years disqualification and a maximum of ten years disqualification. Therefore in respect of the charge preferred against the defendant herein it was clear

that it was not the intention of Parliament to impose a life long disqualification. Section 31 of the RTA had no application to the charge in question as it did not state that the defendant was to be punished under s. 31 of the RTA.

[3] The date of the offence as stated in the aforesaid charge is 30 October 1998 and so the pre-amendment law as stated in the former s. 42(3) prescribing for a one-year disqualification would apply.

Per Curiam:

[1] In matters such as road traffic offences which would affect and indeed cover a large section of the public and hence a great deal of public interest is likely to be generated, it is imperative for a learned magistrate to be exceptionally careful and to exercise an unlimited abundance of caution so that the correct sentence is meted out, within the maximum limit prescribed by Parliament. Such caution may be manifested and actually carried out by way of paying special attention to the provisions of the law governing the offence and the specific provision of the section in the act as stated in the charge for the purpose of imposing the sentence in question.

[Order of life-long disqualification set aside.]

Legislation referred to:
Criminal Procedure Code, s. 323
Road Transport Act 1987, ss. 31, 42(1), (2), (3)

For the respondent - Michael Lee; M/s Lee & Yong
For the DPP - Anselm Charles Fernandis; DPP

Reported by Suhainah Wahiduddin

JUDGMENT

Low Hop Bing J:

My attention has been drawn to this matter by the learned deputy public prosecutor, Melaka, so that I may exercise my powers of revision under s. 323 of the Criminal Procedure Code.

One Lai Chee Cheng (the defendant) has been charged with the following offence:

> Bahawa kamu pada 30.10.98 jam lebih kurang 11.30 malam di Jln Tun Razak Daerah Melaka Tengah dalam Negeri Melaka sebagai penunggang motorsikal MAD 9971 telah menunggang kenderaan tersebut di atas jalanraya dengan

keadaan melulu dan dengan itu boleh mendatangkan bahaya kepada pengguna jalanraya yang lain dengan ini kamu telah melakukan satu kesalahan dan boleh dihukum di bawah Sek. 42(1) Akta Pengangkutan Jalan 1987.

Translation: That you on 30 October 1998 at about 11.30 pm at Jalan Tun Razak in the district of Melaka Tengah in the state of Melaka as a rider of motor cycle No. MAD 9971 rode the said motor cycle on the road recklessly which is dangerous to other road users and you have thereby committed an offence punishable under s. 42(1) of the Road Transport Act 1987.

Upon the charge being read to him, the defendant had pleaded guilty. After assessing the facts of the case and accepting the said plea, and recording a conviction against the defendant, the learned magistrate Melaka imposed a sentence of three days' imprisonment and a fine of RM3,000 or, in default of payment, three months' imprisonment. In addition, the learned magistrate made an order disqualifying the defendant from holding or obtaining a class B driving licence for life.

Section 42 of the Road Transport Act 1987 reads as follows:

42. (1) Any person who drives a motor vehicle on a road recklessly or at a speed or in a manner which having regard to all the circumstances (including the nature, condition and size of the road and the amount of traffic which is or might be expected to be on the road) is dangerous to the public shall be guilty of an offence and shall on conviction be liable to a fine not exceeding six thousand ringgit or to imprisonment for a term not exceeding three years or to both and, in the case of a second or subsequent conviction, to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) The court shall order particulars of any conviction under this section to be endorsed on any driving licence held by the person convicted.

(3) A person convicted under this section shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of not less than twelve months from the date of the conviction from holding or obtaining a driving licence.

(4) Notwithstanding subsection (1), where a person who is a holder of a probationary driving licence is convicted under this section, the court shall thereupon revoke his driving licence.

It is clear from s. 42(1) that Parliament has prescribed a fine not exceeding RM6,000 or a maximum imprisonment term of three years or both, in respect of a first conviction, while in the case of a second or subsequent conviction,

the maximum fine shall not exceed RM10,000 or a maximum imprisonment term of five years or both. The sentence meted out by the learned magistrate i.e. three days' imprisonment and a fine of RM3,000 in respect of the first conviction against the defendant appeared to be within the maximum sentence prescribed by Parliament and is therefore not an illegal or erroneous sentence.

However, what disturbs the learned deputy public prosecutor and also this court is the imposition of a life long disqualification on the defendant who is prohibited from holding or obtaining a driving licence for class B vehicles for life. This sentence is obviously outside the ambit of s. 42(3) which generally empowers the court to order that the defendant be disqualified for a period of not less than 12 months from the date of conviction from holding or obtaining a driving licence. If the learned magistrate is minded to order a period of disqualification for a longer or shorter period than the one-year disqualification, it is then incumbent on the learned magistrate to state or record any special reason for such shorter or longer period of disqualification. No such special reason was stated or recorded by the learned magistrate nor can it be found in the summary order of the learned magistrate.

It is noteworthy that s. 31 of the same Act provides as follows:

> 31.(1) Any court before which a person is convicted of any criminal offence in connection with the driving of a motor vehicle:
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> (a) may in any case, except where otherwise expressly provided by this Part, and shall where so required by this Part, order him to be disqualified from holding or obtaining a driving licence for life or for such period as the court thinks fit; and
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> (b) may in any case, and shall where a person is by virtue of a conviction disqualified from holding or obtaining a driving licence or where an order so disqualifying a person is made, or where so required by this Part, order that particulars of the conviction and of any disqualification to which the convicted person has become subject shall be endorsed on any driving licence held by the offender:
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> Provided that, if the court thinks fit, any disqualification imposed under this section may be limited to the driving of a motor vehicle of the same class or description as the motor vehicle in respect of which the offence was committed.
>
> (2) A person who by virtue of an order of a court under this Part is disqualified from holding or obtaining a driving licence may appeal against the order in the same manner as against a conviction, and the court may, if it thinks fit, pending the appeal, suspend the operation of the order.

Section 31 is indeed a general provision while s. 42(3) is a specific or special provision. It is an established principle of construction that where an Act provides for a specific provision such as the provision containing the maximum sentence as in s. 42(3) for the charge in question, and also a general provision as contained in s. 31, the specific provision found in s. 42(3) must prevail. *Generalia specialibus non derogant*. That s. 31 is not intended to apply here is further reinforced by the amendment to s. 42(3) *vide* Act A1065/99 which came into force on 1 October 1999 which now provides for a minimum of two years disqualification and a maximum of ten years disqualification. Therefore in respect of the charge preferred against the defendant herein it is clear that it is not the intention of Parliament to impose a life-long disqualification. Therefore I hold that s. 31 has no application to the charge in question as it did not state that the defendant was to be punished under s. 31. In the instant case, the date of the offence as stated in the aforesaid charge is 30 October 1998 and so the pre-amendment law as stated in the former s. 42(3) prescribing for a one-year disqualification would apply.

In matters such as road traffic offences which would affect and indeed cover a large section of the public and hence a great deal of public interest is likely to be generated, it is imperative for a learned magistrate to be exceptionally careful and to exercise an unlimited abundance of caution so that the correct sentence is meted out, within the maximum limit prescribed by Parliament. Such caution may be manifested and actually carried out by way of paying special attention to the provisions of the law governing the offence and the specific provision of the section in the Act as stated in the charge for the purpose of imposing the sentence in question. The error as shown in this revision would then be avoided and the resultant embarrassment would be saved. It is my fervent hope and earnest wish that such an error would not recur.

On the foregoing grounds, I hereby set aside the said order of life-long disqualification imposed by the learned magistrate and substitute it with an order that the defendant be disqualified for a period of one year, from the date of conviction i.e. 19 April 1999 from holding or obtaining a class B driving licence. Since the one year period has now expired on 19 April 2000, the defendant is now at liberty to hold or obtain his class B driving licence and the road transport department shall be notified accordingly.

I wish to record my word of appreciation to the learned deputy public prosecutor for bringing this matter to my attention.